

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN - Division

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2006 JUL 10 A 10:00

CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Kym Gray # 203553 R
PLAINTIFF

- vs. -

PAUL WHALEY
DEFENDANT

CIVIL ACTION number:
2:06-CV-107-MEF

STATE OF ALABAMA
Bibb County

SWORN AFFIDAVIT
TRAVERSE TO ANSWER

my NAME is Kym Gray A.I.S. number to be 203553
and I am OVER THE AGE OF (21) TWENTY-ONE YEARS, and
I am CURRENTLY BEING CONFINED IN AN ALABAMA STATE
PENITENTIARY, SERVING A SENTENCE OF (50) FIFTY-YEARS
FOR THE OFFENSE OF MURDER FROM THE COUNTY OF
LOWNDES ON, OR ABOUT THE 12th DAY OF MARCH,
1999.

PURSUANT TO THE INSTRUCTIONS OF THIS COURT, THE
FOLLOWING NOTICE OF OBJECTION IS SUBMITTED WITH
REGARD TO DEFENDANT WHALEY'S MOTION FOR SUMMARY JUDGMENT
FOR HIS [WHALEY] SLANDEROUS AND DEFAMATORY LIBELOUS
STATEMENT SUBMIT TO THIS HONORABLE COURT REFUTING
GRAY'S COMPLAINT.

C.D.

PLAINTIFF GRAY DOES RESPECTFULLY SUBMIT HIS
GENERAL RESPONSE IN GOOD-FAITH SEEKING THIS
HONORABLE COURT'S JUDICIAL REVIEW OF PLAINTIFF'S
UNDERLYING FACTS AND ISSUES THEREIN OF [GRAY'S]
 1983 CIVIL COMPLAINT PURSUANT TO THE PROVISIONS
 SET-FORTH IN 42 U.S.C.

1. PLAINTIFF GRAY STATES THAT UNDER THE
 CIVIL RIGHTS ACT OF 1871 AND AS AMENDED
 A PRISONER [GRAY] MAY SEEK REDRESS
 WHEN A PERSON [WHALEY] ACTING UNDER
 COLOR OF STATE LAW [M]ISUSE OF POWER
 POSSESSED BY VIRTUE OF STATE LAW, AND
 DEFENDANT WHALEY'S ACTION WERE MADE
 POSSIBLE ONLY BECAUSE THE WRONGDOER IS
 CLOTHED WITH AUTHORITY OF STATE LAW.

2. PLAINTIFF GRAY ARGUES THAT DEFENDANT WHALEY
 IS REQUESTING MOTION FOR SUMMARY JUDGMENT
 TO BE GRANTED AND GRAY DOES "STRONGLY ENTER
 HIS OBJECTION FOR SUMMARY JUDGMENT WHICH
 PLAINTIFF GRAY SAY "MUST FAIL" IN THIS CAUSE
 BEFORE THIS HONORABLE COURT [GRAY] STATES
 FOR THE RECORD THAT THE ISSUES AND FACTS
 CONTAINED THEREIN OF GRAY'S COMPLAINT IS
 MERITORIOUS ON IT'S FACE. FURTHER PROCEEDINGS
 ARE NEEDED IN THIS CAUSE TO PROTECT GRAY'S
 CONSTITUTIONAL RIGHTS AS SECURED UNDER
 THE CONSTITUTION OF THE UNITED STATES.

3. PLAINTIFF GRAY DOES ASSERTS THAT DEFENDANT WHALEY IS NOT ENTITLED TO QUALIFIED IMMUNITY OR ABSOLUTE IMMUNITY AS SOUGHTED BY DEFENDANT WHALEY IN THIS FOUR PLAINTIFF'S CASE-IN-CHIEF. DEFENDANT WHALEY HAS ENTER INTO THE RECORD OF THIS MATTER FALSE AND ERRONEOUS INFORMATION IN HIS [WHALEY] GENERAL DEFENSE PLEA'S, WHICH IS WRONG. PLAINTIFF GRAY RELIES ON THE CASE AUTHORITY OF WEST U. ATKINS 487 U.S. 42 54-55 [1988] SEE: FLINT U. KENTUCKY DEPARTMENT - OF CORRECTIONS, 270 F.3d 220 - 255 [6TH CIR 2002] SEE: SMITH U. WADLE 461 U.S. 30 51 [1983].

PLAINTIFF GRAY STATES THAT HIS CRIMINAL CONVICTION AND SENTENCE WAS FOR THE CRIMINAL OFFENSE OF MURDER AND THE RECORD AND/OR COURT PROCEEDINGS DOES NOT INDICATE THAT [GRAY] HAD RAPED AND/OR FORCED THE VICTIM TO-WIT:

CAROLYN McMEANS GRAY TO HAVE "SEX WITH GRAY BEFORE HER UNTIMELY DEATH THE RECORD IS SILENT AND THE OFFICE OF THE DISTRICT ATTORNEY NEVER PRODUCED EVIDENCE THAT PLAINTIFF GRAY SEMEN AND/OR FLUIDS WERE FOUND INSIDE THE VICTIMS BODY AND/OR VAGINAL THE LAW IS WELL SETTLED IN ALABAMA IN WHICH THE COURTS HAVE RULED THAT NOTHING CAN BE PRESUMED FROM A "SILENT RECORD".

PLAINTIFF GRAY STATES THAT DEFENDANT WHALEY, HAS INTENTIONALLY SLANDER HIS CONVICTION IN WHICH WHALEY IS LIBEL. (3).

FOR ENTERING FALSE AND ERRONEOUS INFORMATION INTO A.D.O.C. FILES THAT GRAY CAN ONLY CHARACTERIZE AS "EVIL MOTIVES OR ILL WILL TAKEN IN SUCH RECKLESS AND CALLOUS DISREGARD FOR PLAINTIFF GRAY'S FEDERAL RIGHT CITING Nieto v. KAPOR 268 F.3d 1208 1221-23 [10th Cir. 2001].

PLAINTIFF GRAY DOES CONTENDS THAT DEFENDANT WHALEY IS NOT ENTITLED TO ABSOLUTE AND QUALIFIED IMMUNITY FROM GRAY'S 1983 CIVIL COMPLAINT INsofar AS WHALEY'S CONDUCT AND ACTIONS DID VIOLATE CLEARLY ESTABLISHED STATUTORY AND CONSTITUTIONAL RIGHTS OF [GRAY] OF WHICH A REASONABLE PERSON [WHALEY] WOULD HAVE KNOWN CITING: HUNTER V. BRYANT 502 U.S. 224 228 (1991) [PER CURIAM].

THE ISSUE OF IMMUNITY IS AN QUESTION FOR THIS HONORABLE COURT TO DECIDE SEE: CERRONE V. BROWN 246 F.3d 194 198 [2nd Cir. 2001] PLAINTIFF GRAY DOES ASK OF THIS COURT FOR ITS DE NOVO REVIEW GRAY HAS SUBMITTED CASE AUTHORITY IN SUPPORT OF HIS COMPLAINT / ALLEGATION SURROUNDING DEFENDANT WHALEY SLANDEROUS AND DEFAMED STATEMENT SEE: [ATTACHED EXHIBITS].

PLAINTIFF GRAY STATES THAT HE IS ENTITLED TO CLASSIFICATION OF LESSER RESTRICTED INSTITUTIONAL PLACEMENT AS A.D.O.C. RULES AND REGULATIONS, DOES ALLOW. [4].

MURDERS TO ACHIEVE STATUS OF PLACEMENT
AT HONOR CAMPS WITHIN THE PROPERTY OF
THE A.A.O.C. NOT INTO THE COMMUNITIES.
"THEREFORE FOR GOOD CAUSE"

1. THAT THIS COURT ENTER ITS ORDER DENYING
DEFENDANT WHALEY REQUEST FOR ABSOLUTE
AND QUALIFIED IMMUNITY.
2. THAT THIS COURT WOULD PROCEED UNDER ITS
RULE TO EXAMINE THE POTENTIAL MERITS
OF PLAINTIFF'S COMPLAINT, AND AFFORD GRAY
THE DEFERENTIAL WEIGHT OF HIS ALLEGATION
AND GRANT RELIEF AS PLAINTIFF SO
DESERVES IN THIS CAUSE.
3. THAT THIS COURT WILL GRANT ANY OTHER
AND DIFFERENT RELIEF TO WHICH PLAINTIFF
GRAY MIGHT OTHERWISE BE ENTITLED.

CONCLUSION

WHEREFORE PREMISES TO BE CONSIDERED
PLAINTIFF GRAY, DOES ARDENTLY PRAYS THAT THIS COURT
WILL GRANT RELIEF AS SOUGHTED IN THE
PLAINTIFF'S COMPLAINT.

CERTIFICATE OF SERVICE

VERIFICATION

THIS DOES HEREBY CERTIFY'S THAT KYM GRAY HAS
SERVED UPON THE OFFICE OF THE CLERK
DEBRA P. HACKETT UNITED STATES DISTRICT COURT
AND UPON ALL PARTIES INVOLVED IN THIS
ACTION A COPY OF THE.
CSJ.

FOREGOING PLEADINGS, BY PLACING SAME IN THE
UNITED STATES POSTAL-MAIL.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 5 DAY OF July 2006

NOTARY PUBLIC : Sgt. [Signature]
MY COMM. EXPIRES : MY COMMISSION EXPIRES 6-02-2010

CC : Kim T. Thomas
COUNSEL FOR DEFENDANT
ALABAMA DEPARTMENT OF CORRECTIONS

301 - SOUTH RIPLEY STREET
P.O. BOX 301501
MONTGOMERY, ALABAMA
36130-1501

RESPECTFULLY SUBMITTED

[Signature]

Kym Gray

A.I.S. #203553

Bibb CORRECTIONAL FACILITY

565 - Bibb LANE

BRENT, ALABAMA

35034

CC : PERSONAL FILE